

1 THE HONORABLE JAMES L. ROBART
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7 UNITED STATES DISTRICT COURT
8 FOR THE WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 DEVELOPERS SURETY AND INDEMNITY
11 COMPANY, an Iowa corporation,

12 Plaintiff,

13 v.

14 ALIS HOMES, LLC, a Washington state
15 limited liability company; and HOLESHT
16 PROPERTIES, LLC, a Washington state
17 limited liability company, as assignee of
18 PACWEST INVESTMENT GROUP, INC., a
19 Nevada corporation,

20 Defendants.

21 No. 2:17-cv-00707-JLR

22 DECLARATION OF SARAH HOOVER IN
23 RESPONSE TO DEVELOPER'S MOTION
24 FOR SUMMARY JUDGMENT

25 Noted on Motion Calendar: March 2, 2018

26 I, Sarah Hoover, declare as follows:

1. My husband (Leo Hoover) and I are the owners of Alis Homes, LLC, and I
2 make this declaration based upon my own personal knowledge.

3. Attached as Exhibit 1 is a true and correct copy of the complaint filed against
4 Alis Homes by Holeshot Properties in King County Superior Court, Cause No. 17-2-06293-1
5 (the "underlying suit"). We deny the allegations in that complaint.

6. Alis Homes was hired by PacWest Investment Group to perform work at a
7 home in Auburn, Washington, owned by PacWest that PacWest was "flipping." We were one
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1 of many contractors hired by PacWest to do work at the property. Many of those other
2 contractors were not hired by us and were not subcontractors of ours.

3 4. PacWest asserts that it assigned its claims to Holeshot Properties. PacWest and
Holeshot have the same owners.

5 5. In the underlying suit, Holeshot has alleged damages of "not less than \$50,000,"
6 but we have had difficulty pinning down exactly what the damages are and what the source of
7 those damages are. The underlying suit is currently set for trial in August of 2018.

8 6. I understand the issue in this case is whether the court can look at evidence
9 outside the complaint to determine if Developers has a duty to defend Alis Homes, and if
10 evidence outside the complaint can be looked at, does failure to obtain certificates of
11 insurance and hold harmless agreements from subcontractors excuse that duty to defend. We
12 have admitted we did not get certificates of insurance or hold harmless agreements from our
13 four subcontractors. Those requirements were buried in such a long insurance policy that we
14 simply were unaware of the requirements.

15 7. It is not clear to Alis Homes whether some, all, or none of the claims in the
16 underlying suit asserted by Holeshot against Alis Homes arise from work performed by
17 subcontractors of Alis Homes.

18 8. From the underlining in some of the materials attached as exhibits to
19 Developer's motion for summary judgement, it appears Developers is implying we had many
20 subcontractors. What is important to understand is that we were not the general contractor
21 on this project. Holeshot/Pacwest, was its own general contractor doing work on this "flip"
22 home. Many of the contractors on this project were hired by Holeshot/Pacwest
23 independently of us including HVAC, plumbing, and concrete work to name just a few
24 examples. Also, some "subcontractors" who did work for us also contracted directly with
25 Holeshot/Pacwest separately from us for other parts of the project.

9. Alis Homes only hired four subcontractors on the subject project: 2FL Windows and Siding for windows and gutters, Comprehensive Electrical Services, LLC for electrical work, Carlson Custom Finishes for painting, and PDM Drywall & Repair for drywall. We did not use any of these companies for other work at the property, and we did not hire any other subcontractors.

10. Through legal counsel in the underlying case, we asked Holeshot:

Please identify any and all damages you are alleging to have incurred as a result of Alis's actions in this matter, including:

- a. The dollar amount and type of each type of damage;
 - b. The factual basis for each type of damage;
 - c. Estimates, proposals, bids or invoices related to each type; and
 - d. The manner in which these amounts were calculated.

Interrogatory No. 11, which is attached as Exhibit 2. The substance of Holeshot's answer was:

- 1) \$20,000.00 deposit wrongfully retained by Defendant Alis;
- 2) \$4,920.16 paid to CES Electrical to repair defective work;
- 3) General contractor fees, overhead, profit and loss, and supervision (which will require the assistance of an expert witness to calculate and substantiate);
- 4) Out-of-pocket costs in the form of monies paid to subcontractors, materialmen, and labormen to repair and/or complete Defendant Alis' work; and
- 5) Attorneys, fees and costs incurred in pursuing the claims in above-captioned matter.

11. Based upon its answers to interrogatories, Holeshot does not appear to assert any claims related to the installation of the windows, gutters or drywall, meaning the work by 2FL and PDM are apparently unrelated to Holeshot's damage claims in the underlying case. Exhibit 2, Answer to Interrogatory No. 11. In fact, Holeshot/Pacwest states it contracted with 2FL for the windows and the work was completed. Exhibit 2, Answer to Interrogatory No. 12.

12. Based upon its answers to interrogatories, Holeshot's only complaint about painting is that there were some drips. Exhibit 2, Answer to Interrogatory No. 11

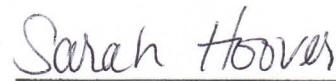
1 13. Based upon its answers to interrogatories, Holeshot's complaint involving
2 Comprehensive Electrical Services is that the wrong electrical panel was installed; kitchen
3 plugs were not moved as discussed; plugs changed without authorization; and an ejector
4 pump had no power. The cost to repair was \$4,920. Exhibit 2, Answer to Interrogatory No.

5 11.

6 14. All other damages asserted by Holeshot against Alis in the underlying suit
7 appear to be unrelated to any work performed by subcontractors. Exhibit 2, Answer to
8 Interrogatory No. 11.

9 I declare under penalty of perjury that the foregoing is true and correct.

10 Dated this 23 day of February, 2018, at Bonney Lake, Washington.

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13 Sarah Hoover

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DECLARATION OF SARAH HOOVER IN RESPONSE
TO DEVELOPER'S MOTION FOR SUMMARY JUDGMENT
2:17-cv-00707-JLR
4 OF 5

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2 **CERTIFICATE OF TRANSMITTAL/SERVICE**
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4 The undersigned declares under penalty of perjury that on the 26th day of February, 2018, a copy of the
5 document to which this certification is attached was electronically filed with the Clerk of the Court using the
6 CM/ECF system which will send notification of such filing to the following:
7

8 Jack Levy, jlevy@smithfreed.com
9 Chin See Ming, cming@smithfreed.com
10 Kyle D. Riley, kdr@smithfreed.com
11 Chad E. Ahrens, chad@smithalling.com
12 Matthew C. Niemela, matt@smithalling.com

13 Dated this 26th day of February, 2018, at Tacoma, Washington.

14 _____
15 /s/ Jeanine Lantz
16 Jeanine Lantz, Paralegal